

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**CHAMBER SUMMONS NO.1191 OF 2006
IN
EXECUTION APPLICATION NO.239 OF 1999
IN
AWARD DATED 9TH DECEMBER, 1998**

M/s. Tridev Movies ...Decree Holders/Orig. Complnts.
Vs.
M/s. Rohitasha Movies ...Judgment Debtors/Orig.Respdts.
And
Mr. Suresh Grover & Ors. ... Co-Respondents

Ms. Armin Wandrewalla ai/b. Ranjit & Co. Advocate for
laintiffs

Ms. Beena Gupta i/b. S.H. Patel, Advocate for Punjab & Sind
Bank, Respondent No.4

Mr. Kansara P.C. Advocate for Co-Respondent No.3

Defendants have not appeared despite service.

**CORAM: SMT. ROSHAN DALVI, J.
DATED: 15TH FEBRUARY, 2007**

P.C.

1. This Chamber Summons is taken out by Decree Holder against the Judgment Debtors who are Respondents 1 and 2 in this Chamber Summons. The property sought to be secured for the Decree Holders has been attached by the Respondent No.4, Punjab & Sind Bank in execution of a

decree obtained by Respondent No.4 in the DRT, Mumbai and auction sale has been held in execution and in the proceeding pending before the DRT in favour of Respondent No.3. Respondent Nos.1 and 2 have challenged the auction sale. The Applicant/Decree Holders have applied for rateable distribution of the amount paid by the auction purchaser Respondent No.3 or which would be obtained upon a further auction sale being held, if the auction sale in favour of Respondent No.3 is set aside.

2. It is seen that Respondent No.4 is a secured creditor. Respondent No.4 shall have to be paid out of whatever are the amount realised from the sale of the property of the Judgment Debtors. However, subject to the payment to Respondent No.4, and any other such claims of secured creditors, the Applicants/Decree Holders are required to be paid.
3. It is argued on behalf of the Decree Holders that if the auction sale is confirmed, the amount of the sale may first redeem, the mortgage of Respondent No.4 or any other such mortgagee. Thereafter if any amounts are in excess they be paid to the Decree Holders/Applicants. If the auction sale is set aside, a fresh auction sale may be ordered in which case the price of the suit property prevailing as on the date of

such freshly ordered sale would be obtained. After such price is obtained also the Applicants/Decree Holder be paid after the secured creditors claims are satisfied.

4. The auction purchaser as well as the Bank, RespondentNo.4 have objected to the reliefs being granted. I do not see how after the claims of the secured creditors, the other unsecured creditors of the Defendants cannot be paid off. Hence, the Chamber Summons is made absolute in terms of prayers A(1) and A(2).

(SMT.ROSHAN DALVI, J.)